NOV 22 1976
OFFICE OF THE CLERK
SUPREME COURT, U.S.

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1976

NO. 76-5729

MARK DAVID OLIPHANT AND DANIEL B. BELGARDE, Petitioners

v.

THE SUQUAMISH INDIAN TRIBE, et al, Respondents

PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

Philip P. Malone
Counsel for Petitioners

INDEX

	Pages of Petition
Opinions Below	2
Jurisdiction	2, 3, 4
Questions Presented	4, 5
Constitutional Provisions, Treaties, Statutes, Ordinances, or Regulations	6, 7, 8, 9
Statement of Case	10, 11, 12, 13, 14, 15, 16, 17
Reasons for Granting Writ	18, 19, 20 21, 22, 23, 24, 25, 26, 27
Conclusion	28

PHILIP P. MALONE
ATTORNEY AT LAW
153 1ST AVENUE
POULSBO, WASHINGTON 98370
(206) 779-3810

APPENDIXES

Pages of Appendix "A"

APPENDIX "A": OPINIONS AND JUDGMENT BELOW
(Separately Numbered 1-51)

Oliphant v. Suquamish Indian Tribe, et al.

U.S. District Court Memorandum Opinion. 1-7

U.S. Circuit Court of Appeals, Opinion. 8-33

Belgarde v. Suquamish Indian Tribe, et al.

U.S. District Court Magistrate Report and Recommendation. 34-49

U.S. District Court Order Denying Writ of Habeas Corpus 50-51

APPENDIX "B": CONSTITUTIONAL PROVISIONS, TREATIES, STATUTES, ORDINANCES, or REGULATIONS
(Separately Numbered 1-70)

Pages in Petition

1. CONSTITUTIONAL PROVISIONS OF THE UNITED STATES:

(a) Article I, §8. Powers of Congress, Section 8, Clauses 3 and 17. (Regulate Commerce. . . . With the Indian Tribes) and (Exercise exclusive legislation (ownership United States Government) - paraphrased within context of petition). 20

(b) Article I, §9. Limitations upon powers of Congress, Section 9, Clause 2. (Privilege of the Writ of Habeas Corpus). 11, 13

(c) Article II, §2. Powers of the President, Section 2, Clause 2. (Presidential powers with the Advice and Consent of the Senate to make Treaties). 20

(d) Article VI, Debts; supremacy; oath, #2 (Supremacy). 19

(e) Article VI, §3. Admission of new states; power over territory and other property, Section 3, Clause 1. (Consent of the Legislatures of the States). 18

(f) Article VI, §4. Guarantee of republican form of government, Section 4. 19

(g) Amendment VI, Jury trial for crimes, and procedural rights (Impartial jury of the State) . . . . . None

(h) Amendment X, Reserved powers to states. 18

PHILIP P. MALONE
ATTORNEY AT LAW
153 1ST AVENUE
POULSBO, WASHINGTON 98370
(206) 779-5516

Petition

2. CONSTITUTIONAL PROVISIONS OF THE STATE OF WASHINGTON: None

3. CONSTITUTION AND BY LAWS OF SUQUAMISH INDIAN TRIBE (1916)

(a) Preamble to Constitution 16

(b) Article I of By-Laws 16

4. CONSTITUTION AND BY LAWS OF SUQUAMISH INDIAN TRIBE APPROVED BY SECRETARY OF INTERIOR (1965)

(a) Preamble to Constitution 15

(b) Article I - Territory. 15

(c) Article II - Membership, Section 1(Indian Blood) 15

(d) Article III - Powers of the Governing Body Section 1, (h) 15

(e) Article IV - Manner of Review, Section 1 15

(f) Article IX - Referendum. 15

TREATIES

1. TREATY OF POINT ELLIOTT, 12 STAT. 927 (1859). 16

UNITED STATES STATUTES

1. 33 STAT. 1078 AND 1079, FIFTY-EIGHTH CONGRESS, SESS. III, §1479 (1905), SECTION 6, ARTICLE I; ARTICLE II; ARTICLE III; ARTICLE IV 11

2. ACT - MARCH 3, 1871 27

3. TRADE AND INTERCOURSE ACTS. 20, 23

(a) 18 USC §1151 Indian Country Defined. 20,21,23

(b) 18 USC §1152 Laws Governing. 20, 23

(c) Legislative history, Section 25 of the Act of June 30, 1834, Section 2146; Revised Statute of 1873. 20

4. MAJOR CRIME ACT 15, 23

(a) 18 USC §1153 Offenses Committed within Indian Country 15, 23

5. ASSIMILATIVE CRIMES ACT 21, 23

(a) 18 USC §13 Laws of States Adopted for Areas Within Federal Jurisdiction. 23

(b) 18 USC §7 Special Maritime and Territorial Jurisdiction of the United States Defined. . . 23

PHILIP P. MALONE
ATTORNEY AT LAW
153 1ST AVENUE
POULSBO, WASHINGTON 98370
(206) 779-5516

		Pages in Petition
6.	INDIAN REORGINIZATION ACT OF 1934.	15
	(a) 25 USC §476 Organization of Indian tribes; constitution and by-laws; special election. . .	15
	(b) 25 USC §477 Incorporation of Indian tribes; charter; ratification by election	15
7.	PUBLIC LAW 83-280 (1953 - 67 Stat. 588).	20,21,22
	(a) 18 USC §1162 State Jurisdiction Over Offenses Committed by or Against Indians in the Indian Country.	20,21, 22, 23
	(b) Public Law 83-280 §6 and §7 (not codified). . . .	20,21,22
	(c) Amendments - Public Law 280 (1970), Public Law 91-523 84 Stat. 1358.	23
8.	PUBLIC LAW 90-284 (1968 - 82 Stat. 78)	20,24
	(a) 25 USC §1303 Habeas Corpus	3, 11
	(b) 25 USC §1311 Model Code	27
	(c) 25 USC §1321 Assumption by State of Criminal Jurisdiction - Consent of United States; Force and Effect of Criminal Laws	20, 24
	(d) 25 USC §1323 Retrocession of Jurisdiction by State.	20, 24
9.	28 USC §2241 (a); (c), (1) and (3), HABEAS CORPUS POWERS TO GRANT WRIT	11, 13

STATE OF WASHINGTON STATUTES, GOVERNOR PROCLAMATIONS SUQUAMISH TRIBAL RESOLUTIONS, SECRETARY OF THE INTERIOR'S ACCEPTANCE OF RETROCESSION

1.	Laws of 1957, Chapter 240.	22, 25
2.	April 29, 1958; Resolution of Suquamish Tribe per vote of 21 members (Re: Public Law 280 (U.S.) and Laws of 1957(State of Washington) . .	22
3.	May 5, 1958, Letter of Request from Suquamish Tribe to Governor Rosellini for Washington to assume jurisdiction	22
4.	May 15, 1958, Proclamation of Governor Rosellini proclaiming and declaring criminal and civil jurisdiction per (1), (2) and (3) above (Sec. 2, Laws of 1957)	22
5.	Laws of 1963, Chapter 36, Amending Laws of 1957, Section 1, RCW 37.12.010	24,25,26
6.	Laws of 1963, Chapter 36, Repealing Section 2, Laws (Governor's authority) and substitution of RCW 37.12.010	24,25,26
7.	January 11, 1971, Resolution of Suquamish Tribe per vote of 29 members, declaring intent to return jurisdiction to United States and retain concurrent jurisdiction.	24, 25
8.	August 26, 1971, Proclamation of Governor Evans, proclaiming Proclamation of Governor Rosellini null and void and retroceding jurisdiction to United States EXCEPT AS PROVIDED UNDER CHAPTER 36, LAWS OF 1964 (RCW 37.12.010 - 37.12.060, 5 and 6 HEREOF).	24,25,26
9.	April 5, 1972, Secretary of Interior of U.S. Notice of Acceptance of Retrocession as offered on August 26, 1971, proclamation of Governor Evans, EXCEPT AS PROVIDED UNDER CHAPTER 36, LAWS OF 1963 (RCW 37.12.010 - 37.121.060, 5 and 6 HEREOF).	24,25,26
	REGULATIONS: MODEL CODE OF SECRETARY OF INTERIOR. .	27
1.	25 CFR §11.1 Application of Regulations.	27
2.	25 CFR §11.2 Jurisdiction.	27
3.	25 CFR §11.22C Jurisdiction.	27
4.	25 CFR §11.39 Assault and Battery.	27
	LAW AND ORDER CODE OF THE SUQUAMISH INDIAN TRIBE ENACTED JULY 29, 1973	13,14,15
1.	Preamble	13,14,15
2.	Chapter I, Jidicial Code	13,14,15
3.	Chapter III, Criminal Offenses	13,14,15

CASES

Anderson v. Glassen, 293 F. 2d 462, 466 (9th Cir. 1961). . 23

Cherokee Nation v. Georgia, 5 Pet. 30 U.S. 1 (1831). . . . 16, 19

Ex, Parte Kenyon, C.C. W.D. Ark., (1878) Fed. Cas. No. 7720, 14 Fed. Cas. 353 27

Omaha Tribe v. Village of Walthill, 344 F. Supp. 823 (D. Neb. 1971) aff'd 460 F. 2d 1327 (8th Cir. 1972). . . 26

Rice v. Sioux City Memorial Park Cemetery, 349 U.S. 70, 75 S. Ct. 614, 99 L. Ed. 897. 19

Robinson v. Sigler 187 N. W. 2d 756 (Neb.Sup.Ct.1971). . . 23

United States v. Kagama,118 U.S.375,379 (1886) 18

Worcester v. Georgia 6 Pet., 31 U.S.1, (1832). 19

Yakima Nation v. State of Washington, D.C. No. 2732(E.D. Wash 1972),appeal pending CA No.74-1225(9th Cir.) 26

PHILIP P. MALONE
ATTORNEY AT LAW
183 1st AVENUE
POULSBO, WASHINGTON 98370
(206) 779-5516

MISCELLANEOUS

	Pages in Petition
M. Price, Law and the American Indian (1973)	19, 27
Attorney General Opinion, State of Washington, AGO 53-64, No. 68.	26

PHILIP P. MALONE
ATTORNEY AT LAW
153 1ST AVENUE
POULSBO, WASHINGTON 98370
(206) 779-5518

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1976

NO. _____

MARK DAVID OLIPHANT AND DANIEL B. BELGARDE, Petitioners

v.

THE SUQUAMISH INDIAN TRIBE, et al, Respondents

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

Petitioners pray that a Writ of Certiorari issue to review:

1. The judgment of the United States Court of Appeals for the Ninth Circuit, entered in the case of Mark David Oliphant v. The Suquamish Indian Tribe, et al. 9 Cir., 1976, Cause No. 74-2154.[1/]

2. Before judgment of the United States Court of Appeals for the Ninth Circuit in the case of Daniel B. Belgarde v. The Suquamish Indian Tribe, et al. 9 Cir., Cause No. 75-3319.[2/]

---

[1]Additional Respondents in the case of Mark David Oliphant v. The Suquamish Indian Tribe, et al., 9 Cir., 1976, Cause No. 74-2154, are: EDWARD SCHLIE, Chief of Police of the City of Bremerton; RICHARD BELMONT, JR., Chairman of Council of Suquamish Indian Tribe; DONALD BREAD, Suquamish Tribal Manager; FRED GUARDIPEE, Suquamish Tribal Police Officer; GRACE DUGGAN, Suquamish Tribal Judge; CECILIA HAWK, Suquamish Tribal Judge; and GEORGE M. FELSHAW, Superintendent of the Western Washington Tribal Agency.

[2]Additional Respondents in the case of Daniel B. Belgarde v. The Suquamish Indian Tribe, et al., 9 Cir., Cause No. 75-3319, are: ROGERS C. B. MORTON, Secretary of the Interior of the United States; CECELIA M. HAWK, Judge, Suquamish Tribal Court; and GRACE DUGGAN, Judge, Suquamish Tribal Court. Party Respondents in the Belgarde case differed only from the Oliphant case in that the Belgarde case included ROGERS C. B. MORTON, Secretary of the Interior of the United States, and did not include EDWARD SCHLIE, Chief of Police of the City of Bremerton; RICHARD BELMONT, JR., Chairman of Council of Suquamish Indian Tribe; DONALD BREAD, Suquamish Tribal Manager; FRED GUARDIPEE, Suquamish Tribal Police Officer and GEORGE M. FELSHAW, Superintendent of the Western Washington Tribal Agency.

PHILIP P. MALONE
ATTORNEY AT LAW
153 1ST AVENUE
POULSBO, WASHINGTON 98370
(206) 779-5518

CITATIONS TO OPINIONS BELOW

Oliphant v. Suquamish Indian Tribe et al., 9 Cir., 1976, Cause No. 74-2154. The memorandum opinion of the United States District Court, Western District of Washington, filed April 5, 1974, typed in Appendix "A" hereto, infra, p. 1-7, is unreported. The opinion of the United States Court of Appeals for the Ninth Circuit, typed in Appendix "A" hereto, infra, p. 8-33, is unreported.

Belgarde v. Suquamish Indian Tribe et al., 9 Cir., Cause No. 75-3319. Report and Recommendation of the United States Magistrate, United States District Court, Western District of Washington at Seattle, dated the 1st day of August, 1975, Case No. C-74-683S, typed in Appendix "A" hereto, infra, p. 34-49, is unreported. The order denying Writ of Habeas Corpus by the United States District Court, Western District of Washington at Seattle, dated August 18, 1975, Cause No. C-74-683S, typed in Appendix "A" hereto, infra, p. 50-51, is unreported.

JURISDICTION

Oliphant v. Suquamish Indian Tribe et al., 9 Cir., 1976, Cause No. 74-2154. The judgment of the United States Court of Appeals, Ninth Circuit, was entered on August 24, 1976. The jurisdiction of this court is invoked under 28 U.S.C., Section 1254 (1).

Belgarde v. Suquamish Indian Tribe et al., 9 Cir., Cause No. 75-3319. Judgment of the United States District Court, Western District of Washington at Seattle, Case No. C-74-683S, was entered on August 22, 1975, R.24. Before judgment of the United States Court of Appeals for the Ninth Circuit, the jurisdiction of this court is invoked under 28 U.S.C., Section 1254 (1).

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT BEFORE JUDGMENT

Before judgment of the United States Court of Appeals for the

PHILIP P. MALONE
ATTORNEY AT LAW
153 1ST AVENUE
POULSBO, WASHINGTON 98370
(206) 779-5516

Ninth Circuit, the case of Belgarde v. Suquamish Indian Tribe et al. 9 Cir., Cause No. 75-3319, is joined in a petition for Writ of Certiorari with Oliphant v. Suquamish Indian Tribe et al., 9 Cir., 1976, Cause No. 74-2154 after judgment by the United States Court of Appeals for the Ninth Circuit, pursuant to Rule 23, Section 5. of this Court, in that each case involves identical or closely related questions and pursuant to Rule 20 of this Court in that the case of Belgarde v. Suquamish Indian Tribe et al., 9 Cir., Cause No. 75-3319 is of imperative public importance as to justify the deviation from normal appellate process and to require immediate settlement in this court upon the following showing:

1. The opinion of the United States Court of Appeals for the Ninth Circuit in Oliphant v. Suquamish Indian Tribe et al., 9 Cir., 1976, Cause No. 74-2154, Appendix "A", infra P. 8-33, makes no distinction in holding that the Suquamish Indian Tribe has criminal jurisdiction for offenses by non-Indians occurring on non-Indian public highways of the State of Washington, occurring within the boundaries of the Port Madison Indian Reservation, (Belgarde v. Suquamish Indian Tribe et al., 9 Cir., Cause No. 75-3319 supra), as from criminal offenses by non-Indians occurring on tribal lands within the Port Madison Indian Reservation (Oliphant v. Suquamish Indian Tribe et al., 9 Cir., 1976, Cause No. 74-2154 supra), and therefore establishes a legal precedence for the sovereign authority and jurisdiction of an Indian Tribe to pass laws, enforce those laws by its police power and adjudicate cases in its tribal court for violation of any of its laws by non-Indians occurring on Indian or non-Indian land within the boundaries of an Indian Reservation.

2. The case of an Indian Tribe having general criminal jurisdiction over a non-Indian who commits crimes within the boundaries

PHILIP P. MALONE
ATTORNEY AT LAW
153 1ST AVENUE
POULSBO, WASHINGTON 98370
(206) 779-5516

of an Indian Reservation, has been unsolved by the courts of the United States for almost 100 years (Oliphant v. Suquamish Indian Tribe et al., 9 Cir., 1976, Cause No. 74-2154, Opinion, Appendix "A", infra, page 8. During that period of time the United States has pursued a policy of termination of tribal ownership of lands by treaty as well as legislation whereby on many reservations, lands are owned by non-Indians in fee simple title derived from title held in patent by the United States after allotment made to individual Indians, and transferred by individual Indians to non-Indians.[3/] As a result, the status of the holding of the United States Court of Appeals, Ninth Circuit in Oliphant v. Suquamish Indian Tribe et al., 9 Cir., 1976, Cause No. 74-2154, results in sovereign jurisdiction and authority of an Indian tribe on Indian reservations over criminal offenses of non-Indians where the majority of the population and the land is non-Indian within the boundaries of those reservations, causing conflict in the laws, causing conflict in the application and enforcement of criminal laws and state and local governments as from laws of the Indian tribe in the application to non-Indians.

QUESTIONS PRESENTED

1. Whether non-Indians while on the Port Madison Indian Reservation in the state of Washington are subject to criminal laws promulgated, enforced and adjudicated by the Suquamish Indian Tribe of that reservation through its tribal council, police and court, for alleged offenses of those laws by non-Indians occurring within the boundaries of the reservation, when jurisdiction of the tribe is exercised by it as an original inherent power of itself as an independent sovereign nation acting territorially within the boundaries of the reservation and without expressed authority of

3/ General Allotment Act, February 8, 1887, 25 USC §331, et al.

PHILIP P. MALONE
ATTORNEY AT LAW
153 1st AVENUE
POULSBO, WASHINGTON 98370
(206) 779-5516

the Constitution of the United States, the Treaty of the United States with that tribe establishing the reservation, the laws of the United States or the State of Washington.

2. Whether when the United States, having plenary power and power by law over crimes on an Indian reservation for offenses occurring between non-Indians and Indians, excluding the jurisdiction of the state wherein the reservation is located, prohibits the tribe by expression or implication from exercising such jurisdiction concurrently with the United States over those offenses occurring within the reservation under the laws of the United States and the United States Constitution.

3. Whether such sovereign criminal power and jurisdiction that the Suquamish Indian Tribe may have had over criminal offenses by or against non-Indians in the state of Washington terminated by the laws of cession of that power by the United States to the state of Washington, coupled with the acceptance by the laws of the state of Washington of that power and the petition and consent of the tribe to such cession and acceptance of jurisdiction prior to the exercise of such power by the tribe.

4. Whether, if such criminal power and jurisdiction the Suquamish Indian Tribe may have had over criminal offenses by non-Indians had terminated as provided in Question 3. hereof, such termination was rescinded upon a subsequent proclamation by the Governor of the state of Washington providing for retrocession of the criminal jurisdiction of the state of Washington to the United States with limitations therein by reference to the laws of the state of Washington, and the acceptance of retrocession by the Secretary of Interior of the United States, limiting such acceptance to those laws as provided in the Governor's proclamation.

PHILIP P. MALONE
ATTORNEY AT LAW
153 1st AVENUE
POULSBO, WASHINGTON 98370
(206) 779-5516

CONSTITUTIONAL PROVISIONS, TREATIES,
STATUTES, ORDINANCES, OR
REGULATIONS INVOLVED

are as follows and are typed in Appendix "B" hereto, infra, P. 1 to 70, thereof, filed separate from this Petition.

	Appendix "B" Pages
CONSTITUTIONAL PROVISIONS	
1. CONSTITUTIONAL PROVISIONS OF THE UNITED STATES:	1-3
(a) Article I, §8. Powers of Congress, Section 8, Clauses 3 and 17. (Regulate Commerce. . . . With the Indian Tribes) and (Exercise exclusive legislation (ownership United States Government) - paraphrased within context of petition).	1
(b) Article I, §9. Limitations upon powers of Congress, Section 9, Clause 2. (Privilege of the Writ of Habeas Corpus).	1
(c) Article II, §2. Powers of the President, Section 2, Clause 2. (Presidential powers with the Advice and Consent of the Senate to make Treaties).	1-2
(d) Article VI, Debts; supremacy; oath, ¶2 (Supremacy).	2
(e) Article VI, §3. Admission of new states; power over territory and other property, Section 3, Clause 1. (Consent of the Legislatures of the States).	2
(f) Article VI, §4. Guarantee of republican form of government, Section 4.	2
(g) Amendment VI, Jury trial for crimes, and procedural rights (Impartial jury of the State)	3
(h) Amendment X, Reserved powers to states.	3
2. CONSTITUTIONAL PROVISIONS OF THE STATE OF WASHINGTON:	4
(a) Article XXVI, Compact with the United States. ¶Second. (. . . . within the boundaries of this state . . all lands . . . . owned or held by any Indian or Indian tribes . . . . . shall remain under the absolute jurisdiction and control of the congress of the United States . . . .).	4

BEST COPY AVAILABLE

PHILIP P. MALONE
ATTORNEY AT LAW
153 1st AVENUE
POULSBO, WASHINGTON 98370
(206) 779-5516

	Pages
3. CONSTITUTION AND BY LAWS OF SUQUAMISH INDIAN TRIBE (1916)	5
(a) Preamble to Constitution	5
(b) Article I of By-Laws	5
4. CONSTITUTION AND BY LAWS OF SUQUAMISH INDIAN TRIBE APPROVED BY SECRETARY OF INTERIOR (1965)	6-8
(a) Preamble to Constitution	6
(b) Article I - Territory	6
(c) Article II - Membership, Section 1(Indian Blood)	6-7
(d) Article III - Powers of the Governing Body, Section 1, (h)	7
(e) Article IV - Manner of Review, Section 1	7-8
(f) Article IX - Referendum	8
TREATIES	9-16
1. TREATY OF POINT ELLIOTT, 12 STAT. 927 (1859)	9-16
UNITED STATES STATUTES	17-28
1. 33 STAT. 1078 AND 1079, FIFTY-EIGHTH CONGRESS, SESS. III, §1479 (1905), SECTION 6, ARTICLE I; ARTICLE II; ARTICLE III; ARTICLE IV	17-19
2. ACT - MARCH 3, 1871	19
3. TRADE AND INTERCOURSE ACTS	20-21
(a) 18 USC §1151 Indian Country Defined	20
(b) 18 USC §1152 Laws Governing	20
(c) Legislative history, Section 25 of the Act of June 30, 1834, Section 2146; Revised Statute of 1873	20-21
4. MAJOR CRIME ACT	21
(a) 18 USC §1153 Offenses Committed within Indian Country	21
5. ASSIMILATIVE CRIMES ACT	22
(a) 18 USC §13 Laws of States Adopted for Areas Within Federal Jurisdiction	22
(b) 18 USC §7 Special Maritime and Territorial Jurisdiction of the United States Defined	22

PHILIP P. MALONE
ATTORNEY AT LAW
153 1st AVENUE
POULSBO, WASHINGTON 98370
(206) 779-5516

	Appendix "B" Pages
6. INDIAN REORGANIZATION ACT OF 1934	22-24
(a) 25 USC §476 Organization of Indian tribes; constitution and by-laws; special election	22-23
(b) 25 USC §477 Incorporation of Indian tribes; charter; ratification by election	23-24
7. PUBLIC LAW 83-280 (1953 - 67 Stat. 588)	24-27
(a) 18 USC §1162 State Jurisdiction Over Offenses Committed by or Against Indians in the Indian Country	24-25
(b) Public Law 83-280 §6 and §7 (not codified)	25-26
(c) Amendments - Public Law 280 (1970), Public Law 91-523 84 Stat. 1358	26-27
8. PUBLIC LAW 90-284 (1968 - 82 Stat. 78)	27-28
(a) 25 USC §1303 Habeas Corpus	27
(b) 25 USC §1311 Model Code	27
(c) 25 USC §1321 Assumption by State of Criminal Jurisdiction - Consent of United States; Force and Effect of Criminal Laws	27
(d) 25 USC §1323 Retrocession of Jurisdiction by State	28
9. 28 USC §2241 (a); (c), (1) and (3), HABEAS CORPUS POWERS TO GRANT WRIT	28
STATE OF WASHINGTON STATUTES, GOVERNOR PROCLAMATIONS SUQUAMISH TRIBAL RESOLUTIONS, SECRETARY OF THE INTERIOR'S ACCEPTANCE OF RETROCESSION	29-26
1. Laws of 1957, Chapter 240	29-30
2. April 29, 1958; Resolution of Suquamish Tribe per vote of 21 members (Re: Public Law 280 (U.S.) and Laws of 1957 (State of Washington)	30-31
3. May 5, 1958, Letter of Request from Suquamish Tribe to Governor Rosellini for Washington to assume jurisdiction	31
4. May 15, 1958, Proclamation of Governor Rosellini proclaiming and declaring criminal and civil jurisdiction per (1), (2) and (3) above (Sec. 2, Laws of 1957)	32
5. Laws of 1963, Chapter 36, Amending Laws of 1957, Section 1, RCW 37.12.010	32-33
6. Laws of 1963, Chapter 36, Repealing Section 2, Laws (Governor's authority) and substitution of RCW 37.12.010	33-34

PHILIP P. MALONE
ATTORNEY AT LAW
153 1ST AVENUE
POULSBO, WASHINGTON 98370

	Appendix "B" Pages
7. January 11, 1971, Resolution of Suquamish Tribe per vote of 29 members, declaring intent to return jurisdiction to United States and retain concurrent jurisdiction	34-35
8. August 26, 1971, Proclamation of Governor Evans, proclaiming Proclamation of Governor Rosellini null and void and retroceding jurisdiction to United States EXCEPT AS PROVIDED UNDER CHAPTER 36, LAWS OF 1964 (RCW 37.12.010 - 37.12.060, 5 and 6 HEREOF)	35-36
9. April 5, 1972, Secretary of Interior of U.S. Notice of Acceptance of Retrocession as offered on August 26, 1971, proclamation of Governor Evans, EXCEPT AS PROVIDED UNDER CHAPTER 36, LAWS OF 1963 (RCW 37.12.010 - 37.12.060, 5 and 6 HEREOF)	36
REGULATIONS: MODEL CODE OF SECRETARY OF INTERIOR	37-38
1. 25 CFR §11.1 Application of Regulations	37
2. 25 CFR §11.2 Jurisdiction	37
3. 25 CFR §11.22C Jurisdiction	37
4. 25 CFR §11.39 Assault and Battery	38
LAW AND ORDER CODE OF THE SUQUAMISH INDIAN TRIBE ENACTED JULY 29, 1973	
1. Preamble	39
2. Chapter I, Judicial Code	40-46
3. Chapter III, Criminal Offenses	47-70

PHILIP P. MALONE
ATTORNEY AT LAW
153 1ST AVENUE

STATEMENT OF CASE

1. Oliphant vs. Suquamish Indian Tribe et al, Cause No. 74-2154.

The petitioner herein, MARK DAVID OLIPHANT, a non-Indian residing on the Port Madison Indian Reservation in Kitsap County, Washington, filed a Petition for a Writ of Habeas Corpus in the United States District Court, Western District of Washington at Seattle on August 23, 1973, alleging that on August 19, 1973, he was imprisoned and restrained of his liberty in the jail of the City of Bremerton, Washington as a result of an unlawful arrest of his person as a non-Indian by officers of the Suquamish Indian Tribe and committed to jail by an Order of the Suquamish Indian Court, until bond was posted for an appearance for trial in the Suquamish Indian Court for violation of a law of the Suquamish Indian Tribe of assault and battery and resisting arrest by the Tribal officers of the Suquamish Indian Tribe. On August 23, 1973, the United States District Court ordered the Chief of Police of Bremerton to appear and show cause in answer to the petition. On August 24, 1973, petitioner was released from the jail of the City of Bremerton, on his personal recognizance to appear for trial before the Suquamish Tribal Court on the charges stated. A return to the Order of Show Cause of the Federal District Court was made by the respondent, the Chief of Police of the City of Bremerton, setting forth an agreement made June 7, 1973 between the City of Bremerton and the Bureau of Indian Affairs for the care and custody of "Indian prisoners" upon written orders of the Suquamish and Port Gamble Tribal Courts and its officers.

On September 11, 1973, the petitioner filed a "Supplement to Petition for Writ of Habeas Corpus" and an order granting leave to file the supplement was granted by the Federal District Court on

PHILIP P. MALONE
ATTORNEY AT LAW
153 1st AVENUE
POULSBO, WASHINGTON 98370

September 11, 1973. The supplement named additional parties respondents (supra Footnote 2), and invoked the jurisdiction of the Federal District Court to test the legality of the arrest, restraint and detention by the respondents, in accordance with:

1. Constitution of the United States, Article 1, §9. Limitations upon powers of Congress, Section 9, Clause 2. (Privilege of the Writ of Habeas Corpus), Appendix "B", infra, page 1, 1(b).

2. PUBLIC LAW 90-284 (1968 - 82 Stat. 78), 25 USC §1303 Habeas Corpus, Appendix "B", infra, page 22, 5(a).

3. 28 USC §2241 (a); (c), (1) and (3), HABEAS CORPUS Powers to Grant Writ, Appendix "B", infra, page 23.

On September 25, 1973, the United States District Court issued an order directed to the respondents to show cause on November 2, 1973 as to the granting of the Petition and Supplement for Writ of Habeas Corpus. Subsequent order extended the return date to January 25, 1974, and further requested memorandum of authorities setting forth in particular:

1. Description of the various Indian lands, both Trust and non-Trust, involved in the present controversy and an analysis of their present status.

2. Description of the Suquamish Indian Tribe as presently constituted and the status of its members in relation to the lands in controversy.

3. Authority of the Suquamish Indian Tribe to promulgate its Code of Laws, affixed as Appendix A to the Memorandum of Authorities of Anicus Curiae filed September 10, 1973.

4. Description of federal or state statutes or regulations, if any, which have limited or restricted the sovereign power of the Suquamish Indian Tribe.

Prior to the hearing, the petitioner filed a Memorandum of Authorities, exhibits, maps, affidavits and sources of authority in compliance with the Court's request. The Respondents caused to file Memorandum of Authorities, exhibits and affidavits. Hearing was

PHILIP P. MALONE
ATTORNEY AT LAW
153 1st AVENUE
POULSBO, WASHINGTON 98370

held on January 25, 1974 in United States District Court. A
randum Opinion of the United States District Court was filed
April 5, 1974, Appendix "A" hereto, infra, pages 1 to 7. Juc
denying the Writ of Habeas Corpus was filed on April 5, 1974.
Appeal was made to the United States Court of Appeals for th
Circuit, that resulted in an opinion being filed on October
affirming the order of the Federal District Court denying th
tion, Appendix "A" hereto, infra, pages 8 to 34.

The majority opinion of the United States Court of Appe
the Ninth Circuit concluded that the Suquamish Indian Tribe,
autonomous state, had jurisdiction over the person of the pe
as a non-Indian, with powers necessary to preserve law and o
upon the reservation, since such powers were not expressly d
by treaty or Acts of Congress. The minority opinion rejecte
concept of sovereignty of an Indian Tribe as applicable to n
members, and by a review of past history and Acts of Congres
cluded that Indian Tribal Courts have no jurisdiction over n
Indians and therefore no express congressional withdrawal ne
made of such jurisdiction.

2. Belgarde vs. Suquamish Indian Tribe et al, Cause No 75-3319.

The petitioner herein, DANIEL B. BELGARDE, a non-Indian
siding on the Port Madison Indian Reservation in Kitsap Cour
Washington, filed a Petition for a Writ of Habeas Corpus in
United States District Court, Western District of Washingtor
Seattle on November 6, 1974, alleging that on October 12, 1
while he was driving on a public highway of Kitsap County,

BEST COPY AVAILABLE

PHILIP P.
ATTORNEY
193 1ST A

Washington, he was forced to stop by officers of the Suquamish
Indian Tribe, who arrested and took him into custody, charged him
with the offence of destruction of private property in violation of
Section 44, Chapter 3 of the Suquamish Tribal Law and Order Code,
and the offense of reckless driving in violation of Section 59,
Chapter 3 of the Suquamish Tribal Law and Order Code; imprisoned
him in the jail of the City of Port Angeles, Washington until
October 4, 1976 pursuant to a contract between the City of Port
Angeles, Washington and the Bureau of Indian Affairs, and that after
having posted bond, he appeared before the Suquamish Tribal Court
for trial, where he was released on his personal recognizance pend-
ing the outcome of a Petition to be filed by him for a Writ of
Habeas Corpus before the Federal District Court of the Western Dis-
trict of Washington at Seattle.

On November 11, 1974, the Federal District Court referred the
case to the United States Magistrate and on November 11, 1974, the
Federal District Court entered an order to show cause requiring re-
spondents a return why the petition should not be granted. On
February 5, 1975, was entered an order setting hearing before the
United States Magistrate.

The petitioner invoked the jurisdiction of the Federal District
Court pursuant to "Article I, §9, Limitations upon powers of Con-
gress, Section 9, Clause 2. (Privilege of the Writ of Habeas
Corpus).", Appendix "B" hereto, infra, page 1 ; "25 USC §1303 Habeas
Corpus", Appendix "B" hereto, infra, page 22; 28 USC §2241 (a); (c),
(1) and (3), Habeas Corpus Powers to Grant Writ", Appendix "B"
hereto, infra, page 23. The Secretary of Interior, as a respondent,
was dismissed from the action and after presentation of affidavits,
memorandums and arguments by the petitioner and respondents, the
United States Magistrate entered a REPORT AND RECOMMENDATION on
August 1, 1975, Appendix "A" hereto, infra, pages 34 - 49.

PHILIP P. MALONE
ATTORNEY AT LAW
193 1ST AVENUE
POULSBO, WASHINGTON 98370

Pursuant to that REPORT AND RECOMMENDATION, the United States District Court entered an order denying the petition for a Writ of Habeas Corpus on August 18, 1975, Cause No. C-74-683S, Appendix "A" hereto, infra, Pages 50 - 51.

As set forth in the REPORT AND RECOMMENDATION, the authority for denying the Writ of Habeas Corpus was the decision of the Federal District Court in the Oliphant case in that a tribe retains inherent sovereign powers which included the right to establish a valid justice and law enforcement program without express authority of the United States Congress and that it mattered little whether that jurisdiction was concurrent with that of the United States or the State of Washington in the exercise of such powers.

Notice of Appeal to the United States Court of Appeals for the Ninth Circuit has been filed, the record forwarded to that Court, and is now in abeyance pending the decision in the Oliphant case.

BOTH CASES

Relevant to the decision of inherent sovereignty of the Suquamish Indian Tribe, it was made known in the memorandum of authorities, exhibits and affidavits presented in each case, the following:

1. FIRST EXERCISE OF JURISDICTION OF POLICE AND JUDICIAL POWERS OF THE SUQUAMISH INDIAN TRIBE.

The first exercise of claimed sovereignty to exercise police and judicial powers over Indians or non-Indians on the Port Madison Indian Reservation by the Suquamish Indian Tribe was the enactment of the Suquamish Law and Order Code by the Tribe on July 29, 1973, (21 days before the offense of Oliphant and approximately fourteen months before the offense of Belgarde (Appendix "B" hereto, infra, pages 39 - 70). It became the law of the tribe by vote of its members acting under Referendum process without approval of the Secretary of Interior, as provided in its Constitution adopted by

PHILIP P. MALONE
ATTORNEY AT LAW
153 1st AVENUE
POULSBO, WASHINGTON 98370
(206) 779-5814

the tribe in 1965. Article IV, Referendum, Constitution and By-Laws of the Suquamish Indian Tribe, Appendix "B" hereto, infra, page 8. The Constitution and By-Laws of the Suquamish Indian Tribe of 1965 was adopted by vote of its Indian members and approved by the Secretary of Interior as required pursuant to the authority of the Indian Reorganization Act of 1934, Appendix "B" hereto, infra, pages 22 - 28. The Constitution did not otherwise provide for ordinances of legislation by the tribe to be enacted without approval of the Secretary of Interior, Appendix "B" hereto, infra, Page 6 - 8.

The Constitution provided that the territorial jurisdiction of the tribe was of tribal lands and unalloted and alloted lands remaining in trust status of the United States on the reservation, Appendix "B" hereto, infra, page 6.

The preamble of the Law and Order Code recited that it was established: "to protect the lives and property of all persons within the boundaries of the Port Madison Indian Reservation", and the Code did further provide for the establishment of the Suquamish Tribal Courts with jurisdiction over all crimes set forth in the Code, committed by any persons on all tribal and trust allotted lands, fee patent lands, public lands, lakes, streams, waterways, highways and beaches within the territorial boundaries of the reservation, except major crimes. Suquamish Law and Order Code, Preamble, §1 Judicial Code, Article I, II and III; §3, Criminal Offenses, Appendix "B" hereto, infra, pages 39 - 42; Major Crime Act, 18 USC §1153 Offenses Committed within Indian Country, Appendix "B" hereto, infra, page 21.

Other than the United States making the treaty of Point Elliott with the tribe, there is no evidence that prior to the making of the treaty in time until and Law and Order Code was enacted by the tribe in 1973, the tribe existed as an autonomous political state or nation with either police or judicial powers over any persons, Indian

PHILIP P. MALONE
ATTORNEY AT LAW
153 1st AVENUE
POULSBO, WASHINGTON 98370

or non-Indian. Constitution and By-Laws of the Suquamish Indian Tribe (1916), Appendix "B" hereto, infra, page 5; Treaty of Point Elliott, 12 Stat. 927 (1859), Article IX, Appendix "B" hereto, infra, page 11.

2. PORT MADISON INDIAN RESERVATION

The Port Madison Indian Reservation, located on the shores of Puget Sound across the waters from Seattle, Washington in Kitsap County, was created originally as one of two special temporary reservations of land reserved for the use and occupation of all the twenty-two Indian Tribes signing the Treaty of Point Elliott with the United States in 1855. Treaty of Point Elliott, 12 Stat. 927 (1859) Article II, Appendix "B" hereto, infra, page 10; Article VII, Appendix "B" hereto, infra, page 11. It subsequently became enlarged by the addition of public lands of the United States to a total of approximately 7,275 acres in 1864 by order of the Secretary of Interior. Members of the Suquamish Indian Tribe subsequently became located on the reservation to the exclusion of other tribes of the Treaty.

The Treaty forecast a policy of the United States of termination of all tribal community ownership and authority over the lands of the reservation by providing that the President of the United States could subdivide the lands into individual allotments and award the lots to individual families for permanent homes. Treaty of Point Elliott, Article VII, Appendix "B" hereto, infra, Page 11; General Allotment Act (1887), supra, Footnote 3. By the year 1910, all tribal lands of the reservation had been awarded to 49 individual Indians and families except approximately 41 acres reserved for school lands. 33 Stat. 1078 and 1079, Fifty-Eighth Congress, Sess. III, §1479 (1905, Section 6, Article II, Appendis "B" hereto, infra, Pages 17-19. The offense of Oliphant took place on a baseball park reserved in a business lease executed in 1968, of

PHILIP P. MALONE
ATTORNEY AT LAW
153 1st AVENUE

36 acres of the last portion of the 41 acres, between the tribe and a non-Indian corporation, for the use of tribal members and their guests and of sublessees of the non-Indian corporation (the remaining 5 acres being a graveyard).

3. INDIAN AND NON-INDIAN POPULATION

In 1902, the total membership of the tribe was recorded in the number of 163 members. In 1916, when the tribe first adopted its constitution, its membership was recorded at 42 members. In 1974, the tribal chairman of the tribe accounted for 50 members of the tribe living on the reservation. The total present membership of the tribe is unknown; it has been estimated at not more than 150 members.

In 1974, the total permanent population of non-Indians living on the reservation in approximately 976 permanent dwellings, paying taxes in Kitsap County, was estimated to be approximately 2,928 persons. In 1974, non-Indians owned approximately 4,597 acres of the total 7,275 approximate acres of the reservation (63%) in fee simple absolute free of trust of the United States, and subject to local real estate taxes of the State of Washington, while approximately 2,637 acres remained in individual Indian allotment status, (36%), with patent held in trust by the United States and exempt from local real estate taxes.

In 1973, there was not any community of Indians living on the reservation in an area separate and apart from non-Indians. Three non-Indian communities of permanent residents exist on the reservation. All public facilities of roads, school, fire and police protection are owned, maintained and operated by authority of the State of Washington. Kitsap County Sheriff's Department and the Washington State Patrol has been and now is enforcing the laws of the State of Washington and Kitsap County for any offenses by non-Indians on non-Indian, as well as Indian land.

PHILIP P. MALONE
ATTORNEY AT LAW
153 1st AVENUE
POULSBO, WASHINGTON 98370
(206) 779-9818

REASONS FOR GRANTING WRIT

1. The concept that an Indian tribe is an independent, autonomous, sovereign state with legislative, police and judicial powers not dependent upon a delegation of authority from the United States over the persons and conduct of all people, including non-Indians, within the territorial boundaries of its reservation within a state of the United States and the United States, unless a treaty with the United States or an act of Congress expressly prohibits such powers, conflicts with principles of the United States Constitution that needs to be resolved by this Court. Such a concept conceives of the origin and existence of such a power independent of and in conflict with the powers delegated to the United States and reserved to the states of the Union and the people of the United States by the United States Constitution. AMENDMENT X, Reserved powers to states. 1. (h), Appendix "B" hereto, page 3. It conceives of an Indian Tribe having inherent reserve powers over non-Indian citizens of a state of the Union equivalent to that of a state of the Union where the reservation is located indirectly contrary to the prohibition of the United States Constitution for the admission of states. ARTICLE VI, §3. Admission of new states; power over territory and other property, Section 3, Clause 1. (Consent of the Legislatures of the States). 1.(e), Appendix "B" hereto, page 2.

As noted in the minority opinion of Circuit Judge Kennedy in the Oliphant case, this Court recognized almost a century ago, only two truly sovereign entities exist at any place within the geographical limits of the United States: the Federal Government and states of the Union. United States v. Kagama, 118 U.S. 375, 379 (1886) Appendix "A" hereto, page 29. An Indian tribe is not a state of the Union and is not a foreign nation. Cherokee Nation v. Georgia, 1831, 5 Pet. 30 U.S. 1. Admission of such powers over non-Indians

PHILIP P. MALONE
ATTORNEY AT LAW
158 1st AVENUE
POULSBO, WASHINGTON 98370

without authority of the United States Constitution, acts of Congress, or legislative action of the states of the Union where the reservation is located denies to a citizen of the United States and a citizen of the state where he resides within the reservation, that the Constitution of the United States is the supreme law of the land and that Bill of Rights has direct application for his protection in the exercise of such powers over him by an Indian government. ARTICLE VI, Debts; supremacy; oath, #2 (Supremacy). 1.(d), Appendix "B" hereto, page 2. Such conflict may not exist as to members of the tribe.[4/] But as to a non-Indian with no rights of representation in the Indian government and the recognization that that tribe has powers of an autonomous state over his person is in conflict in principal with the United States Constitutional mandate that the United States shall guarantee to every state of the Union a republican form of government. ARTICLE VI, §4. Guarantee of republican form of government, Section 4. 1.(f), Appendix "B" hereto, page 2.

2. There is conflict in the interpretation of the laws of the United States in the conception that an Indian Tribe has powers of an autonomous state over non-Indians on a reservation, unless expressly prohibited by treaty or acts of Congress. This Court in Worcester v. Georgia (1832), 6 Pet. (31 U.S.), the decision in which the concept of inherent sovereignty of an Indian tribe is based, (Appendix A hereto, page 9), excluded the extra-territorial jurisdiction of the application of the laws of Georgia to an Indian reservation by preemption of the delegated authority and exclusive jurisdiction of the United States under the United States Constitu-

---

[4/] Citizenship of an Indian and tribal membership are not incompatible with exercise of power by the tribe over its members nor does it affect the powers of the United States Government over Indians. M. Price, Law and the American Indian (1973), pages 225 and 226; Rice v. Sioux City Memorial Park Cemetery, 349 U.S. 70, 75 S. Ct. 614, 99 L. Ed. 897.

PHILIP P. MALONE
ATTORNEY AT LAW
158 1st AVENUE
POULSBO, WASHINGTON 98370

tion without there being an express denial in the United States Constitution of the application of state laws. ARTICLE I, §8. Powers of Congress, Section 8, Clauses 3 and 17. (Regulate Commerce. . . . With the Indian Tribes) and (Exercise exclusive legislation (ownership United States Government) - paraphrased within context of petition), Appendix "B" hereto, 1.(a), page 1; ARTICLE II, §2. Powers of the President, Section 2, Clause 2. (Presidential powers with the Advice and Consent of the Senate to make Treaties), Appendix "B" hereto, 1.(c), page 1-2.

This Court may resolve for the first time whether the acts of Congress in exercising jurisdiction of the Federal Government on Indian reservations (by establishing crimes of a non-Indian on an Indian reservation and providing for the judicial enforcement thereof) have either expressly or by implication preempted and excluded the same exercise of powers by an Indian tribe over a non-Indian in which the majority and minority opinion of the United States Circuit Court of Appeals do not agree. Appendix "A" hereto: Majority, page 11, Lines 25-32; Page 12; Page 13, Lines 1-16 and Minority, Pages 22-29.

The United States Congress throughout the history of the United States has exercised the jurisdiction of the United States over crimes of non-Indians in "Indian Country" through a series of acts known as the Trade and Intercourse Acts that have remained essentially unchanged until passage in 1953 of Public Law 83-280, 67 Stat. 588, Appendix "B" hereto, pages 24-27, and amendment and partial repeal of Public Law 83-280 in 1968, 25 USC §1321; §1323, Appendix "B" hereto, 8 (c), (d), pages 27-28.

In the Trade and Intercourse Acts Congress has provided that the general laws of the United States as to offenses committed within: ". . the sole and exclusive jurisdiction of the United States. . (emphasized). . ." (i.e. federal enclaves: United States Constitution, ARTICLE I, §8, Appendix "B" hereto, 1.(a), page 1) within

PHILIP P. MALONE
ATTORNEY AT LAW
153 1ST AVENUE

"Indian Country". Trade and Intercourse Acts, 18 USC §1151, Indian Country Defined; 18 USC §1152, Laws Governing; Legislative history, Section 25 of the Act of June 30, 1834, Section 2146; Revised Statute of 1873, Appendix "B" hereto, 3.(a), (b) and (c), pages 20-21. Excluded from such application of general laws of the United States are crimes committed in "Indian Country" by an Indian against another Indian or his property, crimes by an Indian punished by local law of the tribe, and crimes by anyone where treaty has provided exclusive jurisdiction in the tribe. 18 USC §1152, Laws Governing, Appendix "B" hereto, 3 (b), page 20, lines 22-27. Thus offenses by non-Indians are subject to the jurisdiction of the general laws of the United States and through the Assimilative Crimes Act the laws of the state where the reservation is located, "Indian Country", adopted the criminal laws of the state in which the reservation is located. Assimilative Crimes Act, Appendix "B" hereto, 5 (a) and (b), page 22. Through adoption by the United States of the laws of the state in which the reservation is located a non-Indian is not subject to the enforcement by a state as well as the Federal Government for two crimes of the same offense.

3. This Court should resolve for the first time whether recent acts of Congress in retrocession of the jurisdiction of the United States to states of the Union has by expression or implication, terminated any inherent jurisdiction an Indian Tribe may have over crimes of non-Indians on a reservation by ceding such jurisdiction to individual states of the Union as provided in Public Law 83-280 (1953-67 Stat.588), Appendix "B" hereto, 7.(a),(b) and (c), page 24, Lines 15-31; page 25; page 26, Lines 1-18. Outrightly, without acceptance being necessary by the states of Alaska, California, Minnesota, Nebraska, Oregon and Wisconsin, jurisdiction of the United States over criminal offenses committed by or against Indians were transferred to those states and the jurisdiction of the United States under the Trade and inter-

PHILIP P. MALONE
ATTORNEY AT LAW
153 1ST AVENUE
POULSBO, WASHINGTON 98370
(206) 779-5918

course Act, became repealed. Public Law 83-280 (1953 - 67 Stat. 588), Appendix "B" hereto, 7.(a) page 24, Line 15 to 31 and page 25, Line 1 to 28. While the state of Washington was not one of those states, jurisdiction was provided to be transferred to it by the United States under Sections 6 and 7 of that act. Public Law 83-280 §6 and §7 (not codified), Appendix "B" hereto, 7.(b), page 25, Line 28 to 32 and page 26, Line 1 to 19.

In 1957 the state of Washington legislature accepted jurisdiction from the United States by providing for tribal resolutions and subsequent proclamations as to individual tribes. Laws of 1957, Chapter 240, Sections 1, 2 and 3, Appendix "B" hereto, page 29 and 30, Lines 1-3. In 1958, the Suquamish Tribe pursuant to such legislation by the state of Washington, resolved and submitted to Governor Rosellini of the state of Washington, its resolution providing:

> "IT IS RESOLVED that the Suquamish Tribal Council hereby requests and expresses its desire that the criminal and civil jurisdiction of the state of Washington be extended to include the people of the Suquamish Indian Tribe and all persons (emphasized) being and residing upon the Port Madison Indian Reservation . . ."

Resolution of the Suquamish Indian Tribe of the Port Madison Indian Reservation, Appendix "B" hereto, page 30, Lines 4 to 30. In 1958, the proclamation of Governor Rosellini accepted jurisdiction pursuant to the tribal resolution, legislation of the United States and of the state of Washington. Appendix "B" hereto, page 32, Lines 1 to 21.

In 1970, the United States Congress, as to the states of Alaska, California, Minnesota, Nebraska, Oregon and Wisconsin, amended Public Law 280 wherein previous jurisdiction of crimes by or against Indians was ceded to those states by the United States outright and the jurisdiction of the United States over those crimes was repealed under the Trade and Intercourse Act, 18 USC §1152, and the Major Crimes Act, 18 USC §1153, Appendix "B" hereto, pages 20 and 21.

PHILIP P. MALONE
ATTORNEY AT LAW
153 1ST AVENUE
POULSBO, WASHINGTON 98370
(206) 779-5515

Such amendment changed Public Law 280 to provide that the Metlakatla Indian Community "may exercise jurisdiction over offenses committed by Indians in the same manner in which such jurisdiction may be exercised by Indian tribes in Indian country over which State jurisdiction has not been extended", and did further add that as to all such states, such states would have "exclusive jurisdiction" previously received outright. Amendments - Public Law 280 (1970), Public Law 91-523 84 Stat. 1358, Appendix "B" hereto, 7.(c), page 26, Lines 15 to 32 and page 27, Lines 1 to 7. The amendment indicates as to the state of Alaska that without such amendment the Indian communities of the state of Alaska had no criminal jurisdiction over criminal offenses committed by Indians as a result of the passage of Public Law 280, thus requiring the amendment. The amendment clearly indicates that Congress has expressed that those states who received outright cession of the jurisdiction of the United States over offenses committed by or against Indians, exercise such jurisdiction exclusive of the jurisdiction of the tribes. Such expression in the amendment of 1970 of Public Law 280 in subsection (a) providing for the repeal of the Trade and Intercourse Act, 18 USC §1152 and the Major Crimes Act (which provided for the jurisdiction of all offenses by non-Indians through the Assimilative Crimes Act and the offenses of major crimes by Indians) and stating that the states, as to those offenses, have exclusive jurisdiction, could only mean exclusive of the tribe, for by the repeal itself, the jurisdiction of the United States terminated leaving only in question the jurisdiction of tribes.

Both state and federal courts have construed 18 USC §1162 as conferring exclusive jurisdiction on state governments. See: Anderson v. Gladden, 293 F. 2d 462, 466 (9th Cir. 1961); Robinson v. Sigler 187 N. W. 2d 756 (Neb. Sup. Ct. 1971).

PHILIP P. MALONE
ATTORNEY AT LAW
153 1ST AVENUE
POULSBO, WASHINGTON 98370
(206) 779-5515

4. The opinion of the United States Circuit Court in the Oliphant case, Appendix "A", page 14, Lines 8-31; Page 15 and Page 16, and the Report and Recommendation of the Federal District Court Magistrate in the Belgarde case, Appendix "A", Page 41, Lines 24-32; Page 42; Page 43, are in error in holding that the United States did not cede to the State of Washington jurisdiction exclusive of the Suquamish Indian Tribe on the Port Madison Indian Reservation over all offenses by non-Indians thereon and that the State of Washington as to those offenses did re-retrocede such jurisdiction to the United States, and that the United States accepted re-retrocession thereof.

In 1963, the State of Washington partially repealed its law of 1957, except providing that such repeal would not effect jurisdiction previously taken such as on the Port Madison Indian Reservation. Appendix "B" hereto, 5 & 6, page 32, Lines 21-32; page 33-34, Lines 1-6.

In 1968 under the Indian Civil Rights Act, the Congress of the United States provided for re-retrocession by states of jurisdiction of criminal offenses by or against Indians. Public Law 90-284 (1968 - 82 Stat. 78), 25 USC §1321, §1323, Appendix "B" hereto, 8 (c), (d), page 27, Line 18; page 28, Lines 1-12.

In 1971 the Suquamish Indian Tribe resolved and submitted a resolution to Governor Evans of the State of Washington, for the State of Washington to re-retrocede jurisdiction of the State of Washington to the United States. Appendix "B" hereto, page 34, Lines 7-31, page 35, Lines 1-14. In 1971, Governor Evans, without authority of the Washington Legislature, by Governor's Proclamation re-retroceded to the United States jurisdiction over the Suquamish Port Madison Indian Reservation, except as provided under Chapter 36, Laws of 1963, supra. Proclamation of Governor, Appendix "B" hereto, page 35, Lines 14-31, page 36, Lines 1-11. In 1972, the office of the Secretary of Interior of the United States accepted

PHILIP P. MALONE
ATTORNEY AT LAW
153 1st AVENUE
POULSBO, WASHINGTON 98370
(206) 779-5514

re-retrocession in accordance with Governor Evans Proclamation, except as provided under Chapter 36, Laws of 1963, supra. Secretary of Interior Notice of Acceptance of Retrocession. Appendix "B" hereto, page 36, Lines 11-31.

The state statute accepting retrocession as to non-Indians intended to confer, so far as offenses by non-Indians "in Indian territory" are concerned, exclusive jurisdiction over such offenses in the laws of 1957 as well as the laws of 1963 which are the same in relation thereto and the laws of 1963 did not amend or repeal that portion stating:

"The state of Washington hereby obligates and binds itself to assume criminal and civil jurisdiction over Indians and Indian Territory, reservations, country, and lands within this state in accordance with the consent of the United States given by the act of August 15, 1953". (emphasized) (Public Law 280, 83rd Congress, 1st Session). See: Section 1, Laws of 1957, Appendix "B" hereto, page 29, Lines 9-15 and Laws of 1963, Appendix "B" hereto, Page 32, Lines 24-29.

The only amendment of the law of 1957 by the law of 1963 was that the above-quoted paragraph did not apply to Indians, except that it did apply to Indians on operation of motor vehicles upon public streets, alleys, roads and highways and where prior to 1963, as to them as well as to non-Indians, a tribe had petitioned for state jurisdiction and a Governor's Proclamation had been issued, such as the Suquamish Indian Tribe and Governor Rosellini had accomplished.

Thus not only as to the Suquamish Indian Tribe, by virtue of its petition and proclamation, had such jurisdiction over all offenses by any persons on the Port Madison Indian Reservation become absolute, as expressly stated in the laws of Washington 1957 and 1963, the laws of 1963 repealed the laws of 1957 only as to offenses

PHILIP P. MALONE
ATTORNEY AT LAW
153 1st AVENUE
POULSBO, WASHINGTON 98370
(206) 779-5514

of Indians on their tribal or allotted lands, except on the operation of motor vehicles on public highways within the reservation.

The opinions in the Oliphant and Belgarde case are in conflict in that the jurisdiction taken by the State of Washington was not exclusive with the opinion of the Federal District Court decision: In Yakima Nation v. State of Washington, D. C. No. 2732 (E.D.Wash. 1972), appeal pending CA No. 74-1225 (9th Cir.), where the court expressly held that the state had exclusive jurisdiction rather than concurrent jurisdiction with the tribe under state law. Likewise, the State Attorney General, when asked whether "the jurisdiction assumed by the State pursuant to #1, chapter 36, Laws of 1963, (is) exclusive or concurrent with tribal jurisdiction", concluded that "to the extent that the state of Washington had assumed criminal and civil jurisdiction pursuant to #1, chapter 36, Laws of 1963, that jurisdiction is exclusive." AGO 63-64, No. 68.

Though the Secretary of Interior exercising plenary powers of the United States (may have accepted partial or illegal re-retrocession under state laws in 1972 conferring jurisdiction in the United States (See: Omaha Tribe v. Village of Walthill, 334 F. Supp. 823 (D. Neb. 1971), aff'd 460 F. 2d 1327 (8th Cir. 1972), cited Majority Opinion, 9th Circuit Oliphant case, Appendix "A" hereto, page 16), the Proclamation of Governor Evans in 1971 and the acceptance by the Secretary of Interior in 1972, qualified what jurisdiction was being taken by reference to the 1963 laws of Washington. Such qualification expressly could confer by such law of 1963, re-retrocession to the United States of jurisdiction over offenses of Indians on tribal or allotted lands with the eight numbered exceptions including operation of motor vehicles on public highways. The Secretary of Interior accepted only partial jurisdiction, if any, over offenses of Indians on the Port Madison Indian Reservation.

PHILIP P. MALONE
ATTORNEY AT LAW
153 1ST AVENUE
POULSBO, WASHINGTON 98370
(206) 779-6516

5. The decisions in the Oliphant and Belgarde case for the first time in the history of the United States have judicially determined that Indian tribes recognized by the United States are autonomous states with inherent powers of sovereignty over non-Indians on their reservation and that such powers include the right to promulgate general criminal laws applicable to them, enforce those laws by their independent police forces, and prosecute and adjudicate in their tribal courts the guilt or innocence of offenses by non-Indians occurring on Indian reservations, unless expressly prohibited by treaty or acts of Congress of the United States.

Such powers are held to exist even though held not to exist almost a century ago.[5/]

The decisions are contrary to the long standing policy and administrative practice by the United States over Indian affairs where laws, Indian police and the courts on Indian reservations have been administered by the United States and limited to offenses by Indians only. Act of March 3, 1971, 25 USC §71, Appendix "B" hereto, Page 19; Indian Civil Rights Act, Public Law 90-284 (1968 - 82 State. 78), 25 USC §1311 Model Code, Appendix "B" hereto, page 27, Lines 13-17; 25 CFR §11.1 Application of Regulation; 25 CFR §11.2 Jurisdiction; 25 CFR §11.22C Jurisdiction, Appendix "B" hereto, Page 37.

It is important that the decisions be reviewed by this Court for the law established by the opinions effect the life and liberty of many non-Indian persons on Indian reservations and may result in duplication and conflict in the application and enforcement of similar criminal laws of many states of the Union where Indian Reserva-

5/ See: Ex Parte Kenyou, C.C. W.D. Ark., (1878) Fed. Cas. No. 7720, 14 Fed. Cas. 353 (Cited Majority Opinion, Appendix "A" hereto, page 8 & 13 and Minority Opinion, Appendix "A" hereto, page 21); See: M. Price. Law and the American Indian, (1973), pages 171, 172 and 173.

PHILIP P. MALONE
ATTORNEY AT LAW
153 1ST AVENUE
POULSBO, WASHINGTON 98370
(206) 779-6516

tions are located with the action of tribes on those reservations within those states. It is believed that some of those states shall submit petitions for the granting of the petitions herein.

CONCLUSION

For the foregoing reasons, the petition for Writs of Certiorari should be granted.

Respectfully submitted,

Philip P. Malone

Philip P. Malone
Counsel for Petitioners

PHILIP P. MALONE
ATTORNEY AT LAW
153 1ST AVENUE
POULSBO, WASHINGTON 98370
(206) 779-5516